FOOD AID MANAGEMENT (FAM) HEADQUARTERS MONETIZATION WORKSHOP FINAL REPORT

Introduction

The FAM Headquarters Monetization Workshop was conducted in Washington, DC from October 22 – 26, 2001 under the auspices of FAM's Monetization Working Group. The workshop planning and organization were based on lessons learned and needs identified in previous FAM Monetization Workshops. During the conduct of 4 earlier field-based workshops[1], the working group identified the need for a workshop in the United States, due to the high numbers of U.S.-based staff attending field workshops in order to receive training. Program staff at some FAM member organizations also wanted to train headquarters financial and legal staff in the basics of monetization, since these staff are often called upon to support monetization activities even if they are not directly involved in a sale. Previous FAM Monetization workshops had also focussed almost entirely on monetization basics, and experienced program staff desired a forum in which to discuss the technical issues of monetization with other experienced monetizers.

In addition, policy developments related to the turnover in administration after the 2000 presidential elections and a growing differences in perception of monetization among some federal government stakeholders and PVOs lead workshop organizers to plan a portion of the agenda around policy issues, inviting stakeholders from the U.S. government, agribusiness, and Private Voluntary Organizations (PVOs) to share their views on monetization and explore areas of common agreement.

After considering the various needs of FAM members, other stakeholders, and the recommendations from previous workshops, the workshop planning committee designed a five-day workshop to address all of the identified issues in the following format:

- Section 1 (Oct. 22-23): Monetization Basics
- Section 2 (Oct. 24): Monetization Policy Dialogue
- Section 3 (Oct. 25-26): Advanced Monetization

The following report describes the events of each day of the workshop, noting questions and major topics covered in each section. A detailed list of attendees can be found in Attachment 2.

[1] The workshops referenced here are: the FAM West and Central Africa Monetization Workshop, held in Accra, Ghana in 1999; the FAM East and Southern Africa Monetization Workshop held in Johannesburg, South Africa in 1999; the Asia Regional Monetization Workshop held in Delhi, India in 2000; and the Latin American and Caribbean Regional Workshop held in Lima, Peru in 2001.

Section 1: Monetization Basics[2]

Days 1 and 2, the basics of monetization, were facilitated by Ron Shaw of Save the Children. This section of the workshop began with a welcome from Monetization Working Group Co-Chair Lee Thompson, of Africare. A two-page pre-test was administered to determine the baseline level of knowledge of participants, and to provide data against which to measure improvement from the post-test, completed at the end of the section on Day 2. (Results from the pre- and post-tests can be found in Attachment 1.)

Day 1: October 22, 2001

Ron stressed initially that it is important for Headquarters contract, legal, and finance personnel to have a good understanding of monetization to adequately backstop food aid programs. He gave a brief overview of the history of P.L. 480 legislation and its components, noting that Title II covers both emergency and non-emergency programs, and that monetization can be a part of either of these types of programming. While Congress mandated in 1996 that 15% of non-emergency Title II food aid be monetized, the actual percentage monetized is over 50% and generates $200 million a year in funding, a critical source of revenue for PVO programs.

Title II is managed by USAID's Office of Food for Peace (FFP), representatives of which were present during all five days of the workshop. As Ron described the structure of USAID and FFP, an FFP participant detailed changes being made in USAID's organization under the new USAID Administrator's restructuring plan. FFP is moving to the Democracy and Conflict Prevention Office, while Program and Policy Coordination (PPC) is combining with the Bureau of Management.

Can monetization proceeds be converted to $US after a sale?

As Title II's purpose is to support PVO implementation of food aid programs and contribute to food security in the country of sale, Title II monetization *must* be conducted in local currency, not $US. This prevents a strain on the country of sale's hard currency reserves. Participants questioned whether or not monetization proceeds could be converted to $US after a sale. Ron responded that proceeds should be converted to hard currency after a sale in orer to preserve their value, and that USAID requires reporting of the cost-recovery achieved in the sale in $US.

Ron stressed that monetization can be an effective means of food distribution where adequate supply is unavailable, hard currency is scarce, and the market is weak: in all of these areas, *monetization can make an important contribution to food security*. In addition, monetization can have the affect of promoting private marketing and

[2] These notes were compiled by Trisha Schmirler, Food Aid Management (FAM), and Jana Prins, Counterpart International.

entrepreneurship, building local capacities, and supporting the logistics of other programs.

Ron noted that **trends** in non-emergency monetization under Title II are:

- The proportion of monetization is increasing
- The high volume of commodities being monetized requries close inter-agency coordination
- Market pressures require PVOs to have "back-up" commodities covered in Bellmon Analyses and Development Activity Proposals (DAPs), in case the originally chosen commodity can not be monetized
- PVOs have more risk and liability
- USAID increasingly relies on policy rather than regulations to manage Title II monetizations

Why is monetization more risky for PVOs?

Participants questioned what changed to make monetization more risky for PVOs. Ron responded that the laws governing monetization have not changed, but there is still a risk for PVOs associated with taking the title of a shipment Freight Along Side (FAS), or when the commodity is at port, ready to be loaded. In addition, the PVO does not have full title as the U.S. Government reserves the right to redirect cargo, although this has never happened. Additional risk occurs because if the sales contract falls through, the PVO is still liable for transport costs, storage of the commodity, and any sales contract provisions which require settlement. Ron also noted that while this is a difficult position for PVOs to be in, USAID/Food for Peace is also in a difficult position because it is the intermediary between multiple stakeholders.

The process of conducting market analyses was discussed, and various options for discovering market information at the local, regional, and national levels were weighed. These included speaking to local traders, the local USAID Mission and/or agriculture attache (if a presence country), the host-country Ministry of Agriculture, the customs and excise office, and freight forwarders. Participants were cautioned that self-interest can influence the information given to them by local traders and others with a stake in the monetization process.

Can one PVO's Bellmon Analysis be used for another PVO's program?

The Bellmon Analysis is the responsibility of the PVO, although USAID missions occaisionally do them also. Participants questioned whether or not another PVO's Bellmon analysis could be used for their own programs in the same country. Ron responded that another PVO's Bellmon Analysis could be used as long as the data covers the commodities in question. Even if it does not cover the needed data, Ron pointed out that other PVO analyses can be useful in conducting one's own. He also noted that Bellmon's *should cover more than one commodity*, ideally two or three commodities, in case it is not feasible to monetize the first-choice commodity. A DAP Concept Paper is useful in guiding what to sell according to the amount of revenue needed for the program.

Would monetization be allowed to represent more than 15% of a country's import or consumption of a commodity *if* demand is higher than supply?

Ron expressed his opinion that if the Bellmon Analysis suggests that a PVO's monetization program would cover more than 15% of imports or consumption of a particular commodity, the program is unlikely to be approved. A participant questioned whether or not approval was more dependent on the food security situation in-country, since demand could be higher than supply. Ron responded that while demand is higher than supply, in an LIFDC, demand is effectively equal to consumption due to extreme poverty (ie, limited purchasing power).

PVOs should jointly review UMR data for commodities regionally, and submit findings to USDA in advance of the programming year.

A key difference between the Bellmon Analysis and the UMR Determination is that the UMR is designed to ensure a monetization has no negative impact on international trading patterns, whereas a Bellmon Analysis is designed to ensure no negative impact on the local market. Conducting the UMR Determination is the responsibility of USDA, however, it should also be conducted by the PVO in order to avoid problems later, as illustrated by the following example. Lee Thompson of Africare noted that in advance of a programming year, PVOs in West Africa reviewed UMR data for several commodities and sent their findings to USDA for approval. This streamlined the UMR Determination process and helped to avoid discrepencies between the PVO's UMR and USDA's UMR. USDA and the PVOs felt that this process was extremely helpful and should be replicated elsewhere.

Which cost is usually greater, FAS or C&F?

As participants discussed cost-recovery benchmarks, they asked if FAS or Commodity and Freight (C&F) is usually the greater cost. Ron responded that it depended on the commodity; for refined vegetable oil, FAS was the greater price, however, C&F is usually the larger of the two. Ron noted that the greater the proportion of the cost made up by freight, the more difficult it is to make benchmark.

Funding trends suggest that Congress believes PVOs have greater food security impact in monetization than the U.S. Government does.

Participants also questioned why the U.S. Government wasn't conducting monetizations itself and providing proceeds to the PVOs. Ron responded that U.S. law states that the responsibility for monetization lies with the PVOs, and that USAID Missions are not equipped to handle monetizatin programs themselves. Lee Thompson further noted that congressional intent has continued to change, decreasing funding for government-to-government monetization and leaving Title II funding the same. This suggests that Congress believes that PVOs have greater impact via monetization than does the government.

Some participants expressed the view that the private sector could monetize more effectively than PVOs, and that proceeds could be channeled to PVOs through the U.S. Government, or that the private sector in the host country could conduct the sale. Lee Thompson responded that the U.S. private sector isn't selling in the markets where PVOs operate because they are extremely difficult situations, or if they are selling, they are not concerned with the potential food security and market impact of their sales. Ron Shaw pointed out that the private sector in many host countries can not comply with U.S. Government regulations for benchmark and shipping requirements, which is a constraint of inconvenience for the U.S. private sector also.

Day 2: October 23, 2001

The morning of Day 2 began with the Call Forward process from the request to USAID to the actual shipping of the commodities. Ron reviewed the Commodity Request for Foreign Distribution (#1550), the standard form used in calling forward commodities from USAID.

Why do sellers buy from PVOs?

One participant questioned why buyers would choose to buy from PVOs rather than the private sector. Ron answered that buyers want to use their local currency to pay so they can keep their hard currency, giving PVOs an advantage because they can only accept payment in local currency.

Ron then briefly addressed the Commodity Reference Guide, which provides commodity fact sheets with a nutritive breakdown, packaging size, ingredients, shelf life, and many other details for Title II commodities.

He provided the following Call Forward timetable in response to a question about the order and timing of the Call Forward process:

- Day 1: USAID/W receives and processes the commodity request (the call forward).
- Day 3: KCCO receives the request.
- Day 11: KCCO processes requests, to include ocean transportation rates and services and issues invitations to bid.
- Day 21: KCCO receives bids.
- Day 22: KCCO analyzes offers and issues acceptances.
- Day 23: KCCO issues press release of awards.
- Day 25: KCCO issues port allocations.
- Day 28-35: KCCO requests liner bookings. PVO shipping agent issues Freight Tender Call, receives offers of ships and completes negotiations. Booking must be concluded within 5 working days.
- Day 60: KCCO issues notices to deliver at least 6 calendar days before the first day of the delivery period.
- Day 70: Lifting from US ports commencess 10 days after the end of the delivery period. This gives the ship time to get into port and load cargoes.

The lead-time required for corn, wheat, grain and sorghum varies according to whether the grain is to be shipped in bulk or bags; or whether bagged in the U.S. or in another country. Delivery to port requires approximately 45 days for bulk cargo and 60 days for bagged, since bulk commodity requires no packaging or production time.

Ron noted that USAID and USDA deal with the issue of paying for discharge at port differently, and that this is the result of the agencies' roles being different. USDA's role is to move grain. USAID's role is delivery of development program commodities.

What do you do when a ship is refused to enter a port because of security issues in the country?

A participant asked what to do when a ship is refused entry at port because of security issues in the country. Ron responded that after finding out why the ship is being deined entry, the ship should be redirected to the nearest port from which the cargo can be delivered to its destination and discharge. The PVO receives the cargo and the USG pays any additional charges. While this situation does not affect the contract with the buyer, the PVO does have to find storage for the commodity until it can be shipped to its final destination.

There are two basic shipping options:

- Free out: the buyer pays to discharge commodity from the vessel. (Not allowed under Title II)
- Full Berth Liner Terms: Only Title II option – FOR/FOT/SAV (free on rail/free on truck/safe alongside vessel – storage)

If a PVO must meet benchmark price based on the cost of foreign vessel, but ship on a US vessel, how is it possible to figure out the real cost?

A participant asked how to figure the real cost of shipment if the PVO uses a U.S. vessel to ship, but a cost-estimate based on the foreign-flag rate. Ron responded that a full U.S.-flag rate is used in budget preparation. The PVO will get the benefit of the lowest flag carrier to use in the benchmark, but in reporting back to Congress, USAID must use the U.S. flag rate to provide a true picture of cost-recovery.

Ron continued by reviewing sales methods open to PVOs: negotiated sales, tender auctions (sealed bid), or outcry auctions. The selling mechanisms, expected prices and other aspects of selling commodities should be detailed in the monetization portion of the DAP. He noted that it is extremely important to ensure transparency of the entire sale process from beginning to end in order to minimize disruption and earn the trust of local purchasers. Lot size, minimum and maximum purchase amounts, and payment procedures should be fixed before the sale. These criteria should be sufficiently limited to discourage frivolous bidders, but encourage maximum participation from large and small bidders. Requirements for permits, licenses, etc; should be avoided, as should requirements that buyers be incorporated, provide current tax receipts, commercial bank accounts, trading and import licenses, or evidence of chamber of commerce membership. Any of these things could limit the pool of buyers to a select few. Recommended basic criteia are the ability to post a deposit, pay on delivery, market and store the commodity. Buyers should not owe money to the USAID mission.

Ron described both pay-as-bid processes (where bidders pay exactly what they offered) and stop-out price processes (where everyone selected pays the lowest acceptable bid price) for payments. Either one can be used as long as the terms of payment have been clearly stated and adhered to during the sale process.

What is the minimum number of bidders?

Participants asked what is the minimum acceptable number of bidders. Ron answered 12-15 for a small lot tender auction, but it is important to ensure these are separate, competing companies or individuals. Only 2 or 3 bidders mean collusion could be a problem. Also bidders often bid under other family member's names. If the prices offered are above the benchmark, even in only a few bids, the PVO is obliged to go ahead.

Are PVO's obligated to give a minimum acceptable price?

Participants also asked if PVOs are obligated to give a minimum acceptable price. Ron responded that if there are only a few buyers, yes, but not if there are a lot. If a floor price is set, most bids will be just above that price. It is better to just let the market take its course.

Ron closed the two-day session by thanking everyone for their participation and administering the post-test and evaluation.

Section 2: Monetization Policy Dialogue[3]

Day 3: October 24, 2001

Facilitator for Day Three: Dave Evans, Food for the Hungry International

I. Overview of Food Security Policy / Use of Food Resources ("Realizing International Food Security Goals with American Food Aid Resources" by Judy Bryson)

Presenter: Judy Bryson, Africare

The presentation began with comment/analysis of the proverb, "rather than give a man a fish to eat, it is better to teach him how to fish". The appropriateness and political correctness of this statement was challenged by the speaker with examples provided of how food assistance can be the impetus for initiation of enterprise development, market expansion, and overall household food security.

[3] These notes were compiled by Steve Zodrow, Food Aid Management (FAM)

A brief overview of the evolution of U.S. food aid policy over the years was presented. The 1995 U.S. food policy that focussed on the three conditions for food security (access, availability, utilization) was outlined. Since 1995, PVOs and the WFP have utilized food resources to target these three aspects of food security through both direct food distribution programs and development food programming that has required cash input. Participants at the 1997 World Food Summit agreed to reduce by one-half the chronically undernourished population in the world by 2015 (Rome accord). A recent state of food security report by the FAO (SOFI) spoke to progress to date since 1997. The report claims that the intended rate of decline in under nutrition worldwide is not being achieved thus far. However, particular countries have improved significantly and are already achieving the targeted decline in malnutrition.

Photos of examples of participatory household food security assessment tools from Africare's work in West Africa were highlighted. The presentation stressed the fact that in order to reach the targeted food deficit populations in these countries, Africare and other PVOs must work under very difficult conditions that are usually in remote rural areas with poor marketing systems and other infrastructure. In order to achieve program goals in these working areas, cash is required for operational purposes. Monetized food resources have provided the necessary cash input needed to carry-out these programs

While USAID policy requires that a minimum of 15% of Title II food resources are to be monetized, over the last few years PVOs have increased monetization within their programs and the current practice is that 64% of the total food tonnage for Title II is monetized.

In comparison to distribution and other cash-based programs, the speaker theorizes that when food resources are monetized, a significant impact upon local and regional markets results and that while this achievement is a common objective of USAID and the PVOs, the benefits are not being documented. She provided an example again from West Africa where 14 countries monetize Title II food, 13 of these locations use value-added products, and all are achieving bench mark prices with 0% ????? loss. And, despite very difficult working conditions in these countries, i.e. market corruption, poor port facilities, etc., the marketing system and structure is being stimulated and this improvement has led to local traders gaining confidence in the developing market-economic environment.

U.S. commodities monetized in these countries are generating further economic development as these Title II food resources move through the commercial hands of brokers, traders, millers, processors, and shopkeepers thereby improving the efficiency and impact of the market.

II. Perspectives on Monetization – Positions and Issues

Presenters: PVOs, USAID, USDA, OMB, NAMA, NAEGA

Definitions
Interest: What may be motivating a stakeholder to act.
Position: A desired outcome. What a stakeholder would like to see from their perspective.
Issue: Identifiable concrete question or concern.

Presenter: Bob Bell, CARE
Position #1: Monetization is an appropriate response for use in non-emergency Title II programs.
Issue: The USG may see a limited role for monetization for addressing food security objectives.
Issue: Has it been determined by the USG that the direct distribution of food aid will more effectively address food security legislative and USAID policy goals?
Response from USG: Yes.
Issue: Is the issue with monetization - the sale or commodity selection?
Position #2: Analysis for non-interference with commercial patterns of trade and local production and marketing are fundamental to monetization.
Position #3: Monetization should take place in accordance with the usual and customary practices of international sellers and buyers in countries where sales are to take place. For example, consideration must be given to local or off-shore sale and sales in local or any hard currency.
Position #4: There should be multiple monetization models available for PVOs rather than the current traditional approach.
Issue: How to determine when different models are to be used.
Position #5: USAID, PVOs, agriculture industry should review relationship and timing of DAPs and annual budget/commodity approvals and their relationship to procurement and delivery requirements for monetization.
Issue: Approvals and procurement/delivery requirements not always synchronized.

Presenter: Jeanie Markunas and Rich, Newberg USAID/FFP
Position #1: There is an appropriate role for monetization in title II emergency and non-emergency programming.
Issue: Is the choice of monetization related to resource generation or as a food security event.
Issue: Are there other financing options within Title II; could legislation or policy be changed to expand options (examples: expanded section 202e authority and/or authority to pay non-emergency ITSH with a dollar grant).
Position #2: We are all in the business of risk management.
Issue: Event of monetization results in a loss, not full recovery.
Issue: Food security activities require huge amount of resources, including H.R.
Issue: Operational impact.
Position #3: There are limits to monetization capacity country by country.

Issue: How do we improve the manner in which choices are made.
Position #4: We are committed to attempting to meet legal requirements of Title II (sub-minimum, 75% value-added, etc.).
Issue: How do we improve legislation, guidelines, procedures to do the above.
Position #5: It is important to retain and build skills base and staff to support both Title II emergency and development activities (direct distribution & monetization worldwide).
Issue: How?
Position #6: USG should allocate appropriate resources for program type.
Issue: If monetization is only used to generate funding for development programs, it is not the best way to allocate resources.
Issue: Even at 100% C&F, USG must subsidize.
Issue: Use of bulk commodities makes it difficult for USAID to meet 75% value-added commodity requirement.
Position #7: USG believes programs (monetization or other) should have food security impact, which should be measured/documented.
Issue: What is the impact of monetized sales on the local economy?
Issue: Difficulties with 3rd country monetization: intent is for commodities to have impact in same country programmed for.

Presenter: Robin Tillsworth, USDA
Position #1: Food aid programs should use all program tools available, including monetization.
Position #2: Monetization can accomplish many food security goals (generate cash, stimulate markets, development).
Position #3: Reviewing market displacement first is important.
Issue: Standardization between USG agencies-USDA & USAID.
Issue: How to handle transfer of title and other logistical/legal questions.
Issue: Displacement.
Issue: Commercial practices adopted that are fundamental to returns.

Presenter: Paul Greene, North American Millers Assoc. (NAMA)
Position #1: Monetization is important but case specific. High priority-for development purposes and nutrition delivery. Low priority-for generating cash.
Position #2: Desire reforms that would lessen need for monetization for cash (via the Agri-PVO coalition).
Position #3: Be careful of learning curve needed for monetization of value-added commodities.
Issue: There are limitations where monetization should be used.
Issue: Need predictable and reliable supplies of food resources and predictable systems/reforms in programming & monetization.
Issue: Other resources needed for PVOs.
Issue: Definition needed 'for return on the dollar'.
Issue: Difficulty meeting value-added requirement.

Presenter: Gary Martin, North American Export Grain Assoc. (NAEGA)
Position #1: Monetization distorts markets.

Position #2: Monetization limits market competition.
Position #3: Much of monetization concern stems from large government to government monetization (416 b).
Issue: Need for fully competitive open markets.
Issue: What does monetization mean to PVO community?
Issue: How do PVOs not distort commercial markets.

Presenter: Theresa Stoll, Office of Management and Budget (OMB)
Position #1: Want maximum value/impact of food aid programs for taxpayer.
Issue: There is a trade off between different types of programs.

III. Review of Positions and Issues / Categorization of Positions-Issues

Flip charts with the positions and issues were hung around the room for review and discussion by participants.

IV. Discussion and Identification of Common Positions-Issues

The common theme of the majority of the positions presented was identified as: for Stakeholders Monetization has a place in food aid programming and is an appropriate way to accomplish food security objectives.

V. Identification of Critical Issues-Implications for Stakeholders of the Common Position

The critical issues identified were:

- Should PVOs conduct the monetization or commercial vendors?
- Is monetization for cash a good use of resources?
- There is a high risk to PVOs that monetize (liability, encumbered title, PVO as commercial entity).
- With declining cash resources available, are there alternatives for replacing monetization as generator of cash for development programs.
- Standardization needed between USDA & USAID monetization practices.
- How to minimize impact impact/distortion on local markets.
- Need to explore alternative models of monetization.
- Need to give feedback on cultural acceptability of different commodities specified.
- Need more data on monetization’s positive food security impact (markets, food security,etc.).
- Need more regular and predictable standardized monetization systems and requirements.
- The amount of groundwork/paperwork needed to import commodities into recipient countries.

Participants were asked to vote on what they felt to be the most important issue identified above that could be addressed. The top two choices below were selected and possible solutions were brainstormed:

A. Monetization for cash: is it appropriate? What are the alternative resources?
B. What are alternative models of monetization.

Monetization for cash: is it appropriate and what are the alternative resources?
- increase ITSH cash for development programs
- increase 202e
- container/pallet sales
- increase or mandate % of DA for food security
- trust funds/endowments
- interest from microfinance/enterprise
- increase private donations
- increase host country contributions
- increase funding from other government and multilateral donors
- monetize commodities for animal feed

Alternative models of monetization.
- “piggyback” monetization on existing commercial sales
- commercial-PVO partnerships
- USDA as broker etc.
- model used in Haiti
- non-adjacent country –occasional sale for supplemental funding in “piggyback” style
- ability to monetize for $USD
- FOB sales
- increase auction and tender sales

The participants began a discussion session on the solutions/alternatives brainstormed but due to time constraints the group decided to postpone the discussion to allow adequate review of the choices proposed, select the feasible approaches, and flush out ideas on examples/models that could apply.

The brief but incomplete discussion of some of the feasible solutions/alternatives brainstormed follows:

Monetization for cash: is it appropriate and what are the alternative resources?
Increase ITSH cash for development programs:
- not allowed under current law
- possible ‘zero sum’

Increase 202e:
- more flexible than change in ITSH
- requires farm bill change

- internal (FFP) change in allocation to WFP & PVOs

Increase or mandate % of DA for food security
- mission partnership in presence countries
- FFP/W advocates that mission allocate DA $

VI. Follow-up Plans

For Exploring Alternative Resources:
Discussion to inform DA allocation process for PVOs & WFP and on increasing the 202e funding to be held at next FACG meeting on November 6th.

For Alternative Models of Monetization:
Agri-PVO Food Aid Working Group will meet to discuss and define potential models, develop model details, and present to USDA-USAID Task Force for consideration and feedback on proposals considering USG policy, legislation, feasibility, etc.

Section 3: Advanced Monetization[4]

Day 4: October 25, 2001

Session 1: Financial Instruments—Letters of Credit, Bank Guarantees, Other
John McArthur, Vice President of Standard Chartered Bank/Global Transaction Solutions, spoke about different financial instruments: letters of credit, bank guarantees, and other kinds. Each method of payment has varying degrees of risk for the importer and exporter. He also spoke about the factors to consider when selling goods.

Regarding letters of credit, Mr. McArthur explained how they work, the payment process, documentary requirements, responsibilities of the advising bank, types of letters of credit, and advantages to the buyer and seller. He also went through a checklist of what the buyer and seller should each be sure to do. Amendments, fees, discrepancies and implications of discrepancies were also reviewed.

Mr. McArthur mentioned that the difference between a stand-by letter of credit and a commercial letter of credit is that the stand-by letter of credit requires a 50% capital allocation, so that if the customer (buyer) defaults, the bank can still make the payment to the seller. Bank guarantees are more common because they are cheaper to issue while they protect against failure of payment of the buyer. A bank guarantee is also advantageous to the buyer because they don't have to put up 100% of the letter of credit. However, a commercial letter of credit offers more protection to the buyer because of the document requirements that the seller must satisfy.

[4] These notes were compiled by Irene Abdou, Counterpart International, and Mara Russell, Food Aid Management (FAM).

Session 2: Principles of Contract Law

Ned Pendleton, a retired lawyer, reviewed the basics of contract law. There are two types of contracts: bilateral—a promise for a promise (example: a promise to pay for a delivery of wheat); and unilateral—a promise for an act (example: a promise to pay if you stop smoking).

A contract may be written or oral. It may be *implied* (an implicit process that is repeated year after year, for example, each year, I put tomatoes on your porch, which you sell); it can be *of prescribed form*, such as a letter of credit, or of *no prescribed form*, such as a monetization contract. Mr. Pendleton described each of the elements of a contract. Descriptions of each element under common law and UCC are:

Common Law

Offer:
- You are intending to be bound.
- Terms must be definite.
- Offer must be communicated to offeree.
- Terminate by revoking, which only occurs when the offeree revokes, a counteroffer is made, or there is a lapse of time.

Acceptance:
- Only by offeree or his agent.
- Must be unequivocal (accept exactly what was offered).
- Must accept by same or faster mode than the offer came as (FAX vs. mail).
- Effected when the offerer receives the acceptance.

Consideration:
- Value given in return for a promise.

Legality:
- Contract is void if contrary to law.
- Both parties must agree to put in place a contract, where the decision may not be made in duress.
- If mistakes are unilateral, then the contract is enforceable against the erring party. The nonviolating party can seek damages, seek to enforce, or cancel.

Written form:
- Terms must be written.

UCC

Offer:
- May have open terms if the parties intended to make a contract and the intent is clear, such that the court can order performance of the contract.
- Only need to specify what is being sold and what quantity—the court will interpret the rest.

Acceptance:
- Valid by any manner or means. For example, acceptance may be expressed by prompt shipment of commodity or by notice.

Consideration:
- Not required.

Written form:
- Must be written.
- Few required details—may be just a memo that both parties sign.

Obligations of Seller:
- When delivery tender is made, it must be a single delivery of conforming goods unless tranches are specified in the contract.
- Delivery to the place specified.
- Adhere to terms of shipment contract.

Obligations of Buyer:
- Acceptance and payment for conforming goods at time and place of receipt
- Has right to inspect before paying unless it's against C&F

Exceptions to the perfect tender rule (deliver exactly what is specified):
- -Seller may buy conforming goods and ship them
- -Commercial impracticability
- -Destruction of goods

If breach of contract occurs:
- If the seller still has the goods—withhold delivery, sue, sell the goods, or cancel the contract
- While the goods are in transit—stop delivery
- While the buyer has the goods—sue for price to reclaim goods

If there is a non-delivery of the goods/conforming goods, the buyer may:
- give notice to the seller to cancel
- buy from someone else, and claim the price difference from the seller
- must do what he can to mitigate the seller's damages
- sue for damages
- sue for breach of implied warranty
- deduct damages from the purchase price
- refuse delivery

PVOs should never make a contract that requires delivery by a specified time.

Does the buyer pay for extra commodities if the contract calls for one amount and more than that is delivered?

One person asked if the buyer has to pay for extra commodities—for example, if the contract calls for the delivery of 50,000 MTs and receives 55,000 MTs. Mr. Pendleton answered that the contract will specify a tolerance (for example, 5,000 MTs) and will say if the buyer is willing to buy more than 50,000.

Sessions 3 and 4: Boilerplate Contract Review and Small Group Exercise
After the introductory session to contract law, participants reviewed the boilerplate contract developed by Catholic Relief Services. Two versions were passed out. One of the versions contained notes on components of the agreement. (Note: the monetization contract may also be used as a bid form on a tender.)

Recommendations and comments made by participants:

- Lines 9 and 10, page 1: "Seller has executed a Program Agreement with the US Government. The USG will donate wheat to Seller for sale in Ghana." "Program Agreement" should be changed to "Cooperative Agreement," and the word "donate" should be changed to "provide."
- Section on Commodity, page 1: current maximum dockage is 0.7%, not 0.8%. Next year, the maximum will be 0.6%.
- Section on Shipment Period, page 2: one month shipment period is not long enough.
- Section on Insurance, page 2: "The Seller and the USG shall retain all rights and responsibilities for pursuing general average claims and claims for commodity

damage or shortage up to the end point of discharge in the port of discharge. The Buyer may elect to purchase marine insurance, but such insurance shall be subordinate to marine claims of the USG and the Seller. Before loading of the cargo at the US port, the Buyer shall advise Seller whether Buyer is purchasing marine insurance."

- The word "may" should not be utilized—this is not contract language.
- The first two sentences apply to USAID; the last sentence applies to USDA.

After reviewing the boilerplate contract, the moderators divided participants into six groups. Each group was given a monetization contract to review and critique. Comments were presented to participants by each group.

Day 5: October 26, 2001

Session 1: Monetization Umbrella Agreements and MOUs
Lee Thompson - Africare

The most important benefit of monetization umbrella agreements or joint monetization programs is that these activities enable the formation of consortia. No longer is the USAID mission in the field asking CSs to do the work of selling for its purposes, but CSs are working together to serve their own purposes. MOUs formalize the relationships and roles within these consortia.

Advantages of Monetization Consortia

1. Streamline process for CSs and AID
2. Often enable submission of a single document to AID & donors prefer to deal with one unit
3. Often enable a better selling or negotiating position with a buyer
4. Enable improved information sharing
5. Economies of scale often lower administrative costs or freight rates (not always)
6. They often provide an opportunity for capacity building as CSs learn from one another about monetization.

Liability for sales within consortiums is shared 100%. Each member holds liability not only for their own portion of the resource, but for the entire resource being monetized.

Disadvantages of Monetization Consortia

1. If there is only one organization acting as lead agent on a sale, only one group learns how to monetize
2. Consortia members who are not actually conducting the monetization might remain uninvolved as passive participants. If the lead agency fails, other members are more vulnerable because they relinquish control, yet they share the liability.
3. There may be philosophical differences among the members of a consortium and divergent priorities.
4. A lead agent may have historical relationships with USAID or buyers that are not shared with the rest of the consortium. This makes it more difficult for the lead role to rotate among the members.

In consortia, the ultimate consignee for the commodity will vary from country to country. In Angola, Save the Children is the sole consignee, and there is only one name of the Bill of Lading. In other cases, each member of the consortium is mentioned on the Bill of Lading.

The new Freight Authorization Form enables debiting of multiple freight accounts to divide up freight costs. This works best with bulk shipments or large shipments. Another way to divide up shipping charges is to stagger smaller shipments for the different consortium members throughout the year. This may work better with processed commodities.

It is possible for consortium members to be present during the sales process. This is often the case during small lot tender sales.

Two examples of monetization consortium MOUs were passed around for review: the Ethiopia monetization MOU, and the Niger MOU which supports implementation of a joint DAP.

The Ethiopia MOU involves the establishment of a separate monetization unit. This is a common strategy in many countries where there are numerous consortium members. The units are primarily involved in commodity sales, but also participate in market analyses. Such units are very often under a lot of pressure from members to complete sales and then distribute proceeds. Participants asked the following questions regarding the MOU:

Q: The MOU does not mention how fees are paid. How is this accomplished?
A: CARE adds a fee to its percentage allocation to cover cost of the unit, and then divides up the remaining funds to the members. This is based on a budget that has already been developed – which can pose problems if there is a shortage of funds. In a number of consortiums, the lead receives a percentage *after* the sale, in which case the percentage is calculated based on actual proceeds. A concern with this is the need to be auditable.

Q: USAID determines the tonnage and resource allocations to be made to the members. Why is this?
A: Normally, USAID is an *ex officio* member of the consortium. This is an important issue within the Ethiopia agreement, and to some extent unique based on the prerogative of the Ethiopia USAID mission.

Q: There is no indication of how proceeds are to be distributed. How is this done?
A: Normally, this would be listed within the MOU. However, these are all long-standing programs, and percentages appear to be common-knowledge to all, so the amounts are "by implication".

Q: Why is there no discussion of means of selection of the lead agency?

A: Most MOUs do include some means of selection. In Ethiopia, there is a rotational administrative chair, but there is no indication within the MOU of who selects the lead agency and how.

A brief time was spent on the Niger Joint Program MOU, which covers a much broader range of issues than monetization. It should be noted that monetization will occur in more than one country (Africare submits the proposal, but CRS monetizes in Burkina Faso for the program). Proceeds move both between countries & organizations. However, a main point throughout is that all members are accountable for the program.

<u>Session 2:</u> Panel on Commodity Groups & Representatives
Paul Dickerson – US Wheat Associates, VP of Overseas Operations
Mary Aldrich – USA Rice Federation
Bill March – USDA (NFDM)
Peggy Sheehan – American Dried Bean Associates

Wheat Grades
Paul Dickerson explained the US Wheat Associates is a non-profit consortium funded by USDA and American Wheat Growers representing the interest of wheat growers throughout the United States. The organization has offices throughout the world.

He stated that it was important that anyone involved in buying and selling wheat needs to be familiar with the five main wheat classes grown within the US for export:
1. Hard Red Winter Wheat (HRW): 39% of total, or 10.9 MMT per year
2. Hard Red Spring Wheat (HRS): 23% of total, or 6.4 MMT per year
3. Soft Red Winter Wheat (SRW): 18% of total, or 5 MMT per year
4. White Wheat (WW): 16% of total, or 4.4 MMT per year
5. Durum Wheat: 4% of total, or 1.1 MMT

The wheat varieties are characterized by different variables such as the moisture content, hardness or softness of endosperm, color of bran, time of year in which they are produced, and area of the country in which they are grown (which effects the location from which they are exported). The physical characteristics of the wheat, in many cases, determine their, their milling requirements, and, to some extent, their markets. The following table presents information on the various wheat varieties.

Wheat Varieties Grown in the United States

Wheat Type	Where Grown	Exported From	Characteristics	Uses
Hard Red Winter Wheat (HRW)	Lee side of the Rocky Mountains, Southern Kansas and Iowa	Gulf Ports (Texas, Louisiana), and Pacific Northwest	Endosperm: medium hard Bran: red Protein Content: 9.5-13.5%	Panned bread, noodles, general purpose flour
Soft Red Winter Wheat (SRW)	Ohio Valley and Southern U.S.	Gulf Ports (Louisiana, Mississippi), and St. Lawrence Seaway	Endosperm: soft Bran: red Protein Content: 8–11%, Weak glutton: flour can be blended to reduce glutton, at increased cost	Pastries, cakes, cookies, crackers, pretzels
Hard Red Spring Wheat (HRS)	North and South Dakota, Montana, and Minnesota	Pacific Northwest, Gulf Ports, and Great Lakes	Endosperm: hard Bran: red Protein Content: 12-15% Strong glutton, good extensions and high water absorption; combines well with other varieties Subclasses based on Dark Hard Vitreous (DHV) content	Breads, buns, pizza, oriental noodles (due to strong alkalinity)
Durum Wheat	North and South Dakota, Montana, and Minnesota	Great Lakes	Substitutions often made	Limited market in Italy and Venezuela
Soft White Winter Wheat (SWW)	Pacific Northwest	Pacific Northwest	Endosperm: soft Bran: white Protein Content: 8-11.5% Weak glutton, lowest moisture and impurity levels	Cakes, pastries, snacks, Asian noodles

- Dark Northern Spring Wheat has >75% DHV - may be at a premium, and buyers will specify the percentage of DHV. It is important to include DHV % along with commodity specifications in the contract and the Call Forward. Weight and content at load port must also be reflected. Everything should be stated in the same terms.
- Northern Spring Wheat has 25-75% DHV
- Red Spring Wheat has <25% DHV

Official Grain Inspection and Certification

All wheat is inspected by the Federal Grain Inspection Service of USDA (FGIS/USDA) to ensure that it meets quality specifications prior to leaving the export load port. FGIS is an independent, neutral agency that is chartered to facilitate grain commerce by equally protecting the interests of both buyers and sellers – FGIS only inspects grains. It takes samples at the loading port to identify problems with outturn quality because the best samples can be taken during loading. Statistical testing is not possible prior to that point. Sales contracts should require a FGIS Certificate although other tests may be required, in which case they should also be listed.

While title to the commodity transfers to the PVO at the load port, it is possible for the USG to put a claim against the steamship company if there is a quality issue upon delivery. However, claims are paid directly to the USG.

Grade and Class

Wheat should meet grade and class specifications for various markets. In the U.S. market, in most cases # 2 or better is used. Limitations will be imposed on defects and on wheat of other or contrasting classes included in a wheat shipment. In many cases these can vary without actually changing the grade. However, whatever is specified within the contract must be reflected within the call forward. Jim Firth from USDA noted that when adjustments are made this can involve costs, and that it is important to be consistent from a market development standpoint. Producers need to ensure that they meet buyer specifications. Be sure to ask the buyer what they need and prefer.

Grade Vs. Non-Grade Factors that should be taken into account are:

- Class/sub-class
- Numerical Grade factors
- Non-grade factors: protein, moisture, dockage, falling number (Hagberg), damage
- Phytosanitary concerns
- Others (alvegraph, zeleny, wet glutton)

Rice: Grades and Varieties

Rice used in food aid tends to be of a lower quality than what is sold commercially. Monetization is requiring a change of specifications and an improvement in quality. Of the six grades of rice, the rice used in food aid normally is near the bottom of the list. This rice is fine nutritionally and cooks well, but commercial needs are different.

There are four factors that determine rice grades:

1. Type: short, long, medium grain, and fragment
2. Milling & form: brewers rice, parboiled, layer of oil
3. Grade (lower grades are less white): milling degree and varieties; the standard commercial variety is #2
4. Brokens: the food aid tolerance is 7%, commercial tolerance is 4%

Each of these factors should be noted on calls forward, and it should be indicated whether or not the rice should be parboiled.

Grade 2-4 tends to be the commercially acceptable standard. Grade 5-20 is used in food aid. The standard commercial rice tends to be hard milled, and is whiter than well-milled rice. Hard milled rice or very well-milled rice are not available yet, but grade and milling do have an impact on price. Well milled or 5-20 rice sells for $192/MT, and is used in food aid programs. The cost of hard milled rice is $4/MT more. Increasing the grade to a 3-15 (hard milled or well milled) will add $8/MT. This might be an alternative to the standard 2-4 commercial well milled rice that would add $16-20/MT. There is evidence that commercial buyers in monetization markets would prefer a 3-15 rice.

It is important that the rice industry try harder to make rice varieties available that would be appropriate for monetization, as rice exports are now falling. Through monetization there are opportunities for rice producers to open up export markets that would not have been available to them otherwise. At the moment, the rice industry is working on outreach strategies through the KCCO to improve communication with the PVO community and help producers take better advantage of monetization opportunities. Along a similar vein, the wheat industry also would like to provide their support to PVOs wishing to take better advantage of market and commercial opportunities. With regard to monetization, the rice industry sees no conflicts with commercial markets. CSs should consult industry representatives as early as possible, possibly at the time of the Bellmon Analysis, but at least at the time when the commodity is selected for sale.

The largest international competitors in the rice market are Thailand, Vietnam and Pakistan. Thailand poses the greatest challenges as they have three crops per year, where as there is only one crop in the US. The best time to order US rice is in the spring or early summer. The timeframe depends on the year. If an order period is difficult to specify, it is best to try and spread out orders throughout the year.

Non-fat Dry Milk

Bill March of USDA explained that the 1996 Farm Bill instituted a price support program when dairy prices were extremely low. USDA bought NFDM at $1.01/lb when the world market price was up. It was therefore cheaper to buy the milk and store it. Thus, more than 400,000 MT was purchased for both domestic use and Title II. During the 1980s there were over 1 billion pounds in storage, but the authority for this purchase was lost in the 1990s. The purchase price then was approximately $464/MT when the world market price was around $2100.

The standard NDM purchased and stored by the U.S. government is extra grade powder that can last four years in storage according to AMS graders and inspectors. However, the older product will not be available through Title II. This product will typically have been produced within the past six months. The largest inventory of NDM is the low-heat variety, so this will likely be the type provided through Title II. Low-heat NDM is best for use in drinks and yogurts. USDA feels there is no need to specify age or production date as the product can last up to 48 months in a good warehouse. As the commodity is ready to ship, processing of calls forward will be faster than usual.

Shipping and storage requirements are the same as CSB, which tends to have a shelf life of 18 months, or 48 months under good conditions. However, there could be costs in shipping and storage that reduce actual funds recovered from the projected $2100. The need to containerize shipments could add costs. Also, the policy on monetization of NDM submitted to the Federal Register is still receiving comments. This could impact NDM monetization. Some participants raised a question about requiring a manufacture date stamp. If a stamp is required, the industry will accommodate.

Dried Beans

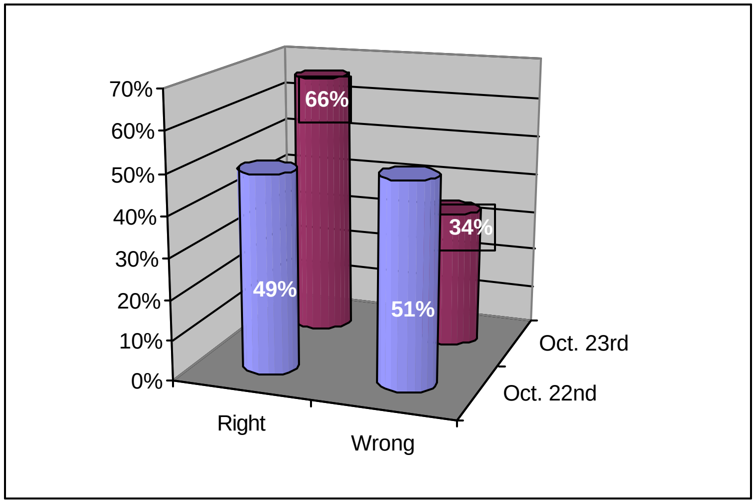
Peggy Sheehan indicated that the American Dried Bean Associates was working to educate the industry regarding the needs of the PVO community in monetization, and to allow producers to take best advantage of the monetization market. She will organize a tour of the growers for this purpose. She has raised the need to develop support on comparative pricing to enable those working around the world to compare bean prices with those of other producers. There is also a need to understand the harvest and price cycle to ensure that orders come in at the most opportune times.

As a final note to the day, Jim Firth informed the group that FAS has developed Commodity Fact Sheets similar to those found within the Commodities Reference Guide (CRG). These are accessible through the home page for FAS. Questions regarding the FAS website should be directed to Mike Mandere.

Attachment 1: Pre- and Post-Test Results from Monetization Basics Section

Questions		Pre-test Answers	Post-test Answers
Q1	**Right**	40	36
	Wrong	3	2
Q2	**Right**	14	22
	Wrong	29	16
Q3	**Right**	21	28
	Wrong	22	10
Q4	**Right**	15	20
	Wrong	28	18
Q5	**Right**	32	34
	Wrong	11	4
Q6	**Right**	9	15
	Wrong	34	23
Q7	**Right**	21	27
	Wrong	22	11
Q8	**Right**	24	24
	Wrong	19	14
Q9	**Right**	17	26
	Wrong	26	12
Q10	**Right**	18	19
	Wrong	23	19
	Total	**428**	**380**

	Pre-test			Post-test	
Total # Partic.	43			38	
Total Correct	211	49%		251	66%
Total Wrong	217	51%		129	34%
	428	100%		380	100%



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